

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,

Plaintiff,

vs.

ROBERT DARNELL BEAL,

Defendant.

Case No. 18-cr-00070-DKW-KJM-12

**ORDER REGARDING
GOVERNMENT’S NOTICE OF
INTENT TO INTRODUCE
CERTIFIED RECORDS (Dkt. No.
369)**

On May 14, 2021, the Government filed a notice of intent to introduce at trial certain certified records—*i.e.*, authorized intercepted communications relevant to the present case. Dkt. No. 369. Though it is not entirely clear to the Court, the Government appears to be seeking the Court’s acknowledgment that the data files containing these intercepted communications are self-authenticating, pursuant to Federal Rules of Evidence 902(11), (13), and (14), such that they need not be authenticated by a custodian at trial. *See id.* In support of this, the Government offers a declaration by Jamaal King, a Supervisory Special Agent with the Federal Bureau of Investigation (“FBI”), who is familiar with and oversees the collection and storage of intercepted communications for the FBI (hereafter referred to as the “King Declaration”). Dkt. No. 369-1.¹

¹Defendant does not agree to stipulate to the introduction of the proffered certified records, as indicated in his June 14, 2021 response to the Government’s notice. Dkt. No. 425.

In addition to explaining King's qualifications and the FBI's data management system for intercepted communications, the King Declaration provides only the following, presumably concerning the data files containing the intercepted communications relevant to this case:

6. I have been requested to verify the authenticity of wireless communications to be presented within the above captioned case. The [agency's] collection system was working as designed during the dates of collection in this case. I have reviewed the data associated with the sessions to be presented at trial in this case.
7. The digital signatures and hash values for the sessions I have been asked to review have been verified as being intact. Therefore, the original sessions and the exhibits to be introduced are an exact match because the hash values match and the digital signatures are intact. I have documented my verification in the attachment to this certification.

Id. at 3.

The Court finds this limited foundation insufficient to authenticate the recordings, as the Declaration, among other things, does not clearly verify what files SSA King reviewed, nor how those files are related to the interception orders approved by this Court and for which the Government has sought introduction through a separate "Notice of Intent" (*see* Dkt. No. 386). At most, SSA King offers that whatever files he reviewed have not been modified from the time they were intercepted and provided to the FBI.

IT IS SO ORDERED.

Dated: June 17, 2021 at Honolulu, Hawai'i.


Derrick K. Watson
United States District Judge

United States v. Robert Darnell Beal, Crim. No. 18-00070-DKW-KJM-12;
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